

The Right Honourable the Lady Katherine Pelham, Widow, of the Right Honourable Henry Pelham, Esquire, and James West, Esquire, surviving Executors of the said Henry Pelham; and which said James West is also Administrator of the Goods and Chattels of Thomas Pelham, deceased, who was eldest Son of the said Henry Pelham, unadministered by Richard Arundell, Esquire, deceased,

Appellants.

Susanna Gregory, Spinster, sole Executrix of George Gregory, Gentleman, deceased; the Right Honourable William Lord Viscount Vane, of the Kingdom of Ireland, Administrator of the personal Estate of Christopher Vane, his late Brother, deceased; the Right Honourable Henry Earl of Darlington; and the Most Noble Thomas Holles, Duke of Newcastle,

Respondents.

The Appellants CASE.

THE Most Noble John, late Duke of Newcastle, was, at his Death, seised or intitled, in Fee-simple, of and in divers Honours, Castles, Manors, Messuages, Lands, Tenements, Rents, and Hereditaments; and also seised or intitled, to him and his Heirs, of and in divers Copyhold Messuages, Lands, and Tenements, and of and in divers Messuages, Lands, and Tenements, held by him by virtue of several Leafes for the Lives of certain Persons; and also possessed of, or intitled to, several other Messuages, Lands, and Tenements, which were held by virtue of several Leafes for long Terms of Years; some of which Terms were absolute, and others determinable on the Death of one or more Person or Persons; and particularly the said late Duke was possessed of divers Messuages, Lands, and Tenements, at Shimpling, called Shimpling Park, in Suffolk, being now of the improved yearly Value of 130*l.* or thereabouts, which he held by Lease from the Crown, granted from the 33 Cha. II. of the Estate to William Hussey and James Biggs, dated 3d June, 33 King Charles II. for a Term of Ninety Years, whereof Twelve Years, or 90 years for 90 thereabouts, were unexpired at Michaelmas 1758, subject (together with other Estates in Nottinghamshire) to 6*l.* 13*s.* 4*d.* a Year, payable to his Majesty, his Heirs and Successors.

7. Aug. 29. The said late Duke made his Will; and thereby, after devising to his Wife Margaret, Duches of Newcastle, and to his Daughter the Duke of New- Lady Henrietta Cavendish Holles, therein called Lady Harriett Holles, certain particular Estates therein mentioned and described,—he gave & Will. and devised all other his Honours, Castles, Manors, Lordships, Manor-houses, Parks, Chaces, Lands, Tenements, Rectories, Advowsons, Rents, and Hereditaments, as well Leasehold and Copyhold as Freehold, wheresoever, and of whatsoever Nature and Quality they were, and every of them, with their and every of their Rights, Royalties, Members, and Appurtenances, and all his Estate and Interest therein in Law and Equity, in manner following; *viz.*—

Unto the Respondent the Duke of Newcastle (by his then Name and Description of the Honourable Thomas Pelham, Son and Heir apparent of the Right Honourable Thomas Lord Pelham) for Life—Remainder

To the First and other Sons of the Respondent the Duke in Tail Male successively—Remainder

To the said Henry Pelham (by the Name and Description of the Honourable Henry Pelham, one other of the Sons of the said Thomas Lord Pelham) for Life—Remainder

To his First and other Sons in Tail Male successively—Remainder

To the Honourable William Vane, second Son of the Right Honourable Christopher then Lord Bernard, for Life—Remainder

To his First and other Sons successively in Tail Male, in like manner—Remainder

To the Honourable Gilbert Vane, then Son and Heir apparent of the said Christopher Lord Bernard, for Life—Remainder

To his First and other Sons successively in Tail Male, in like manner—Remainder

To the right Heirs of John Duke of Newcastle, for ever.—

And in which Will is contained a Proviso, that in case any Person whatsoever, who should or might be intitled to have or take the said Honours, Castles, Manors, and Premises, by virtue of any of the Limitations of the said Will, should at any Time do or suffer, or cause to be done, any Act or Deed whatsoever, whereby to prevent or hinder his the said Testator's Leasehold and Copyhold Estates, or any of them, to go to such Person and Persons, and in such Manner, as by virtue of his said Will his Freehold Estate was thereby limited and intended to go, then and from thenceforth the Person or Persons doing or suffering, or causing to be done, any such Act or Deed, should not have or take any Benefit or Advantage by his said Will, or any the Limitations thereof; any thing therein contained to the contrary thereof in any-wise notwithstanding.—And he thereby gave the Residue of his personal Estate (after Payment of his Debts and Legacies) unto the said Duches of Newcastle his Wife, and he appointed her, and the said Thomas Lord Pelham, and the Honourable Henry Paget, Esquire, Executors of his said Will.

4. July 15. The said John late Duke of Newcastle died, leaving his said Duches, and the said Lady Henrietta, his only Child and Heir at Law.

Duke of New- Soon after the said late Duke's Death several Suits at Law and Equity, and in the Spiritual Court, arose, wherein the Validity of & died. the said Will was contested with respect to his real and personal Estates, pending which Suits Lady Henrietta intermarried with the Right Honourable Edward Harley, then commonly called Lord Harley, who was afterwards Earl of Oxford and Earl Mortimer: And, in some short Time after such Marriage, a Treaty of Accommodation having been proposed, an Agreement was concluded between Lord Harley and Lady Henrietta Cavendish Holles Harley his Wife, and the Respondent the Duke of Newcastle, and the said Henry Pelham or his Friends, he being then an Infant: And thereupon

4. July 30. By an Agreement made between Lord and Lady Harley, of the one Part, and the Respondent the Duke of Newcastle, by his then Name, Stile, and Title, of Thomas Holles Lord Pelham (he having, in consequence of the said Will, assumed the Name of Holles, and the said Thomas late Lord Pelham, his Father, being then dead) and the said Henry Pelham, of the other Part; after reciting that several Suits and Controversies had been and were depending between the said Parties, concerning the Will of Duke John, and concerning a Settlement therein mentioned to have been made by him, and concerning his real and personal Estate, and that a Scheme for an Accommodation and Determination of such Suits and Controversies had been proposed and agreed to, with some Variations,—it was agreed and declared between the said Parties, and the Respondent the Duke, for and on behalf of himself and the said Henry Pelham his Brother, covenanted and agreed, That Lady Henrietta should have, to her and her Heirs, certain particular Estates therein mentioned;—and Lord Harley, on behalf of himself, and of Lady Henrietta his Wife, did thereby covenant and agree with the Respondent the Duke and Mr. Pelham, That all other the Honours, Manors, Baronies, Castles, Lordships, and Estates, as well Leasehold and Copyhold as Freehold, which Duke John was seised or possessed of, or intitled to, in Law or Equity, at the Time of his Death, should be held and enjoyed by the Respondent the Duke for his Life, with such Remainders over, and subject to such Limitations and Restrictions, Trusts, Powers, and Provisoes, and in such manner, as in Duke John's Will are mentioned, expressed, limited, or declared, touching or concerning the same;—and that all the Burgage Houses and Lands in Aldborough, in Yorkshire, belonging to Duke John at his Death, or to which Lord Harley and Lady Henrietta were or was afterwards intitled in Law or Equity, and also certain Manors, Lands, and Hereditaments, in the Counties of Dorset and Wilts, held of the Bishop of Salisbury for Lives, should be held and enjoyed by the Respondent the Duke, with such Remainders over, and in the same manner as the other Honours, Manors, and Hereditaments, therein before agreed to be held by his Grace, were to be held and enjoyed by virtue of the said Agreement;—and that Lord Harley, and Lady Henrietta, should permit and suffer the said Will to be proved in the Ecclesiastical Court, or Court of Delegates; but no Use to be made of the said Probate to the Prejudice of the said Agreement: And it was thereby mutually agreed, that an Act of Parliament should be obtained, if possible, for confirming, establishing, and executing, the said Agreement.

After the Date and Execution of the said Agreement, the Will of Duke John was duly proved in the Prerogative Court of Canterbury, and in the Court of Delegates, by the said Duches Dowager of Newcastle, and Henry Paget, the then surviving Executors: And—

An Act of Parliament was made and passed, intituled, “An Act to render more effectual the Agreements that had been made between Thomas Holles Duke of Newcastle, Henry Pelham, Esquire, Edward Lord Harley, and the Lady Henrietta his Wife, William Vane and Gilbert Vane, Esquires, Sons of Christopher Lord Bernard, or any of them, in relation to the Will and Estates of John late Duke of Newcastle, and for settling the same in such manner as may be agreeable to the Intent of the said Agreement; and for other Purposes therein mentioned”—And by such Act, after reciting, *inter alia*, Duke John's Will, and the said Agreement, and that the said William Vane and Gilbert Vane approved of such Agreement—it was Enacted, That the said Will and Agreement should be, and the same were thereby, ratified, established, and confirmed, except so far as the same were therein after reversed, altered, or changed: And it was also Enacted, That the Estates which were finally agreed to be enjoyed by Lady Henrietta, should be vested, held, and enjoyed, in such manner as is therein mentioned; and that certain Freehold Estates, which were finally agreed to be enjoyed by the Respondent

Respondent the Duke, and the other Persons claiming in Remainder after him, should be, and the same were thereby, vested and settled upon, and, from the Decease of Duke *John*, in and upon, and to the Use of, the Respondent the Duke, for Life—Remainder
 To the Use of his First and other Sons in Tail Male successively—Remainder
 To the Use of the said *Henry Pelham*, for Life—Remainder
 To the Use of his First and other Sons in Tail Male successively—Remainder
 To the Use of the said *William Vane*, for Life—Remainder
 To the Use of his First and other Sons in Tail Male, in like manner as aforesaid—Remainder
 To the Use of the said *Gilbert Vane*, for Life—Remainder
 To the Use of his First and other Sons in Tail Male, in like manner, according to the true Intent and Meaning of Duke *John's* Will
 —Remainder

To the right Heirs of Duke *John*.

And it was also thereby Enacted, That all Leasehold Estates for Lives, which Duke *John* was seised of, or intitled to, on the 29th of August 1707, with their Appurtenances, should be, and the same were thereby, vested and settled, in like manner, in, upon, and to the Use of, the Respondent the Duke, for Life, with all and every such and the like Remainders over as aforesaid.

And it was thereby further Enacted, That all and every other the Manors, Rectories, Advowsons, Tythes, Lands, Tenements, and Hereditaments whatsoever, whereof or wherein Duke *John*, or any other Person or Persons in Trust for him, at or immediately before his Decease, had any Term or Terms for Years, or Chattel Interest, legal or equitable (other than such as were thereby before vested in Lady *Henrietta*, or her Trustees, and except Pontefract Park, and the Leasehold Estates at *Orton* in *Huntingdonshire*, therein mentioned) should be, and the same were thereby, vested in the Respondent the Duke for Life. And it was Enacted, That after his Death the same should be held and enjoyed by such Person or Persons who would have been intitled to the same, in case the said Act had not been made.

And it was thereby further Enacted, That the Respondent the Duke, during his Life, and every other Person and Persons who, for the Time being, should be seised or possessed of any of the said Leasehold Manors, Lands, Tenements, Rectories, Tythes, and Hereditaments, by virtue of the Limitations therein contained, when and as often as he or they should respectively think it convenient, should have full Power to surrender any such Lease or Leases for Life, Lives, or Years, and make the same absolutely void, to the Intent only that it or they might be renewed, or a new Lease or Leases might be made of the Premises, comprised in such surrendered Lease or Leases, respectively, at the Time of such Surrender or Surrenders; and that every such new Lease, and renewed Lease, from time to time, as often as they or any of them should be renewed, should, during the Continuance thereof, be held and enjoyed by such Person or Persons who would have been intitled to such surrendered Lease or Leases, in case the same had continued in being.

And it was thereby further Enacted, That nothing in the said Act contained should be taken, construed, or intended, to confirm the respective Limitations in the said Will contained of the several Terms for Years, whereof Duke *John* died possessed.

By virtue of the said Agreement, and Act of Parliament, the Respondent the Duke entered on all the Manors, Messuages, Lands, Tenements, and Hereditaments, Freehold, Copyhold, and Leasehold, which were thereby limited to him for Life, with Remainders over as aforesaid; and hath ever since continued, and now is, in Possession and Receipt of the Rents and Profits thereof;—and several of the Leases for Years which were in being, and by virtue of which some of such Leasehold Messuages, Lands, and Tenements, were held at Duke *John's* Death, have been, from time to time, renewed.

1739. Nov. 28. The Respondent the Duke hath never had any Issue Male: But the said *Henry Pelham* had Issue Two Sons, both of whom died in Master Thomas Pel- his Life-time; viz. *Thomas*, his eldest Son, who died the 28th of November 1739, aged about Ten Years, and *Henry*, his younger Son, who died 27th of the same Month. And the said *Thomas Pelham*, the Son of the said *Henry Pelham*, being the Person in whom the First Estate Tail, in order of Limitation, of and in the said Freehold Manors, Messuages, Lands, Tenements, and Hereditaments, limited to the Respondent the Duke for Life, was vested, by virtue of Duke *John's* Will, and of the said Agreement and Act of Parliament, the Appellants are advised, that the absolute Estate and Interest of and in all the Manors, Messuages, Lands, and Tenements, held by Leases for Years, and which were by the said Agreement and Act of Parliament limited to the Respondent the Duke for Life, vested in the said *Thomas Pelham*, subject to the Estate for Life of the said Duke, and to the Contingency of his having a Son born, and also subject to the Estate for Life of the said *Henry Pelham* therein, in case the Duke had happened to die in the Lifetime of the said *Henry Pelham* without having had any Son born. And the Appellants are also advised, That the absolute Estate and Interest of and in all such Estates held by Leases for Years, subject as aforesaid, were Part of the personal Estate of the said *Thomas Pelham* at his Death; and that, as such, the same on his Death (he dying intestate) did belong, subject to the Estate for Life of the said Duke, and to such Contingency as aforesaid, unto the said *Henry Pelham*, as his Father, and only next of kin.

1754. Mar. 6. And the said *Henry Pelham*, being so intitled, died on the 6th of March 1754, having made his Will, and appointed the Appellants, and *Richard Arundell* and *Hutton Perkins* Esquires, since deceased, Executors thereof, who all duly proved the same in the Prerogative Court of Canterbury; and thereby became intitled to possess and receive all the personal Estate and Effects whatsoever belonging to the said *Henry Pelham* at the Time of his Death; and the said *Richard Arundell* and *Hutton Perkins*, being since dead, such Right is now become solely vested in the Appellants.

The said *Henry Pelham* did not in his Life-time take out Administration to the said *Thomas Pelham*, his eldest Son; but after the said *Henry Pelham's* Death Letters of Administration of the personal Estate of the said *Thomas Pelham* were granted unto the said *Richard Arundell* by the Prerogative Court of Canterbury; and since the Death of the said *Richard Arundell* Letters of Administration of the said *Thomas Pelham's* personal Estate, left unadministered by the said *Richard Arundell*, have been granted to the Appellant *James West*; and the Appellants are advised, and humbly apprehend, that they are, as surviving Executors of the said *Henry Pelham*, or however the Appellant *Mr. West*, as Administrator of the personal Estate unadministered of the said *Thomas Pelham*, as Part of the personal Estate of the said *Henry Pelham* at the Time of his Death, and for the Benefit of the Persons interested therein, are or is become intitled to the absolute Estate and Interest of and in the said Estates held by Leases for Years, subject only to the Life Estate of the Respondent the Duke therein, and to the Contingency of his having a Son born.

But the said *William Vane*, the Second Son of *Christopher* late Lord *Bernard*, and which *William* was afterwards created Lord *Vane* in the Kingdom of *Ireland*, having had Issue Two Sons; *Christopher*, who died an Infant, and without Issue, and intestate, in the Life-time of his Father; and *William*, his younger Son: And the said *William* Lord *Vane* dying many Years since, leaving the said *William*, the now Respondent Lord *Vane*, his Second Son, and his only Son who survived him, and who hath obtained Letters of Administration of the personal Estate of the said *Christopher*, his said late Brother, to be granted to him by the proper Ecclesiastical Court. And the said *Gilbert Vane*, the eldest Son of *Christopher* late Lord *Bernard*, having had Issue *Henry*, his eldest Son, and several other Sons; and the said *Gilbert* dying long since, leaving the said *Henry*, his eldest Son, surviving him; and which *Henry* became Lord *Bernard*, and was afterwards created Earl of *Darlington*, and now also dead; the said Respondents, Lord *Vane* and the said *Henry* late Earl of *Darlington*, were pleased, a few Years since, to dispute the Appellants Right in the said Leasehold Estates for Years; and to insist, That they, or One of them, were or was intitled to the absolute Right and Interest in all such Leasehold Estates, expectant on the Respondent the Duke's Death without Issue Male, either in his or their own Right, or as Lord *Vane* is Administrator of his Brother *Christopher*.

4 Nov. 1755. And on the 4th of November 1755, the Respondent, Lord *Vane*, filed his Bill in the High Court of Chancery against the Duke of Newcastle and the Appellants, and the said *Richard Arundell* and the said late Earl of *Darlington*, and others; stating the Will and Death of the late Duke, and the other Matters aforesaid; and that the Respondent, the Duke, and the Executors of the said *Henry Pelham*, had offered several of the Estates, held by Leases for Years, to Sale; and were then in Treaty for Sale thereof: But the Persons with whom the Treaty was carrying on being unknown to the said Respondent Lord *Vane*, he could not give them Notice of his Right—And that the said late Earl of *Darlington* refused to join in the said Suit—And therefore praying (amongst other Things), That the Defendants thereto might be restrained from selling any of the said Estates, and might bring into Court all Leases and other Deeds relating thereto: And that the said Respondent the Lord *Vane's* Right to the said Estates, or such Parts thereof as he should appear to be intitled to, might be secured to him: And that such of the Leases as were near expiring, or proper to be renewed, might be renewed; the said Lord *Vane* offering to pay a Proportion of the Fines thereon.

Death of late Earl of *Darlington*. The late Earl of *Darlington*, some time after filing the said Bill, died, leaving the Respondent, the present Earl, his Son and Heir, of *Darlington*. And and having made him Executor of his Will; who, as such, made the like Claims to the Leasehold Estates as were made by his the Respondent, the said late Father: And thereupon, and upon the Appellant *Mr. West's* obtaining Administration of the personal Estate unadministered present Earl, his Heir of *Thomas Pelham* the Son, on the Death of *Mr. Arundell*, the Respondent Lord *Vane* filed his Bill of Revivor and Supplemental Bill against the Respondent the Earl of *Darlington*, and the Appellant *West*, to have the Benefit of the said Original Bill, and the Proceedings thereon. And the several Defendants having put in their Answers,

6 July 1758. Order to dismiss that Bill. The Cause was heard before the Lord Keeper of the Great Seal, on the 6th Day of July 1758, when his Lordship was pleased to order, That the said Bill should be dismissed.

The Appellants being, as aforesaid, intitled to the Estates held by Leases for Years, they, after the Dismissal of the said Bill of the Respondent Lord *Vane*, did, by an Agreement, in Writing, dated the 25th of Sept. 1758, between the Appellants of the One Part, and George *Gregory* Gentleman, since deceased, of the other Part, agree with Mr. *Gregory* for the Sale of the said Estate, Lands, and Premises, called *Shimpling Park*, subject to the Life Estate of the Respondent the Duke therein, and to the Contingency of his having a Son born for 1000 £. and did therein, for themselves, their Heirs, Executors, and Administrators, covenant and agree with Mr. *Gregory*, that the Respondent the Duke should, within Six Months from the Date of the said Agreement, procure a new and effectual Lease from the Crown to be made and granted to the Duke, or such Person or Persons as he should nominate, in Trust, for the Uses and Limitations in the Will of Duke *John* of the said Estate called *Shimpling Park*, and of all Messuages, Farms, Houses, Lands, and Hereditaments, comprised in the said Term of Ninety Years, for such reversionary Term as will fill up the said Term now in being to Thirty-one Years from the Date

Date of such new Lease, at the annual Rent of 1*l.* 13*s.* 4*d.* payable to his Majesty, his Heirs, and Successors, in such manner as in such new Lease shall be reserved and mentioned; the said annual Rent of 1*l.* 13*s.* 4*d.* being a proportionable Share, in respect of the said Estate at *Shimpling*, of the said annual Rent of 6*l.* 13*s.* 4*d.* payable for the same, and for the aforesaid Estates in *Nottinghamshire*; and that they would, within the Space of Three Months next after such new Lease should be made and granted, by such good and effectual Conveyances, Assignments, and Assurances in the Law, as the Counsel learned in the Law of Mr. *Gregory* should reasonably advise or require, well and effectually assign, assure, transfer, and make over, unto Mr. *Gregory*, his Executors, Administrators, and Assigns, all such the contingent Reversionary Interest, as aforesaid, of the Appellants, of and in the said Park, Lands, and Premises, for and during not only all the Residue and Remainder (if any) which should be then to come and unexpired of the said Term of Ninety Years, but also of such Term and Interest as should be granted by the said new Lease; and that, in such Assignments, Assurances, and Conveyances, as aforesaid, all such usual, necessary, and proper Covenants, as well on the Part and Behalf of the Appellants as of Mr. *Gregory*, as their respective Counsel learned in the Law should advise and require, should be inserted and contained.

And Mr. *Gregory*, in Consideration of the Premises, for himself, his Heirs, Executors, Administrators, and Assigns, thereby covenanted and agreed with the Appellants, their Executors and Administrators, that he the said Mr. *Gregory*, his Executors, Administrators, or Assigns, or some of them, should or would, at or before the Time of executing such Assignments and Assurances, as aforesaid, by the Appellants, well and truly pay, or cause to be paid, unto the Appellants, the said 1000*l.* in full for the absolute Purchase of such contingent Reversionary Interest of the Appellants of and in the Premises aforesaid; and also would accept of such Assignment or Assignments, Assurance or Assurances thereof, as aforesaid; and also execute a Counterpart thereof, if thereunto required by the Appellants.

The Appellants, being willing and desirous that the said Agreement should be forthwith carried into Execution, did several times apply to Mr. *Gregory*, and acquainted him of their Readiness to perform the same; and desired him to perform the same on his Part: And the Appellants also made the Respondent the Duke acquainted with the said Agreement; and informed his Grace, That in order to enable the Appellants to perform the same on their Part, it would be necessary that his Grace should procure the Lease of the said Estate, so agreed to be sold, to be renewed according the Terms of the said Agreement. And the Appellants desired his Grace, That he would be pleased to procure a Renewal of the said Lease accordingly. But the Lord *Vane* and the Earl of *Darlington* persist in their Claim to the said Leasehold Estate, and insist that the Appellants have no Right thereto.

ch. Term 1758. Appellants Bill Chancery filed. Wherefore the Appellants exhibited their Bill in the High Court of Chancery against the said *George Gregory*, and the Respondents Lord *Vane*, the Earl of *Darlington*, and the Duke of *Newcastle*; setting forth Duke *John's* Will, and the said Agreement of the 30th of July 1714, and the Act of Parliament of the 4th and 5th of King *Geo.* the First; and also the said Agreement between the Appellants and Mr. *Gregory*, dated 25th of Sept. 1758, and the several other Matters, to the Effect before set forth; except the said Suit commenced by the Respondent Lord *Vane*; and charging, that the Claims of the Respondents Lord *Vane* and the Earl of *Darlington* were without Foundation in Law or Equity; and that the Appellants were well able to make a good Title to the said Estate at *Shimpling*; subject only to the Estate for Life of the Respondent the Duke, and to the Contingency of his having a Son born: And praying by their Bill, that the Respondents Lord *Vane* and the Earl of *Darlington* might set forth what Right, Title, or Interest, they had in or to the said Leasehold Estate at *Shimpling*, and how they made out the same; and that the Agreement of 25th Sept. 1758 might be specifically performed and carried into Execution; the Appellants by their said Bill declaring themselves willing, and thereby offering, to perform the same on their Part: And by their said Bill prayed, that the Lease of the said Estate might be renewed, according to the Terms of the said Agreement; and that the Respondent the Duke might pay the Fine and Fees payable thereon; and that Mr. *Gregory* might, upon the obtaining of such new Lease, and upon the Appellants assigning to him all their Right and Interest in the said Leasehold Estate at *Shimpling*, pay the said 1000*l.* Purchase-Money for the same to the Appellants.

To which Bill Mr. *Gregory*, and the Respondents Lord *Vane*, the Earl of *Darlington*, and the Duke of *Newcastle*, put in their Answers; and thereby admitted the Will of Duke *John*, the Agreement of 30th July 1714, and the Act of Parliament of 4th and 5th King *George I.*

And Mr. *Gregory*, and the Respondents the Earl of *Darlington* and the Duke of *Newcastle*, admitted the Agreement of 25th Sept. 1758.

And Mr. *Gregory*, by his said Answer, declared, that he was ready and willing to perform the said Agreement, provided a new Lease should be obtained agreeable thereto, and that a good Title could be made by the Appellants to the said Estate at *Shimpling* for Thirty-one Years from *Michaelmas* then last, free from any other Incumbrance than the Rent of 1*l.* 13*s.* 4*d.* being a proportionable Share, in respect of the said Estate at *Shimpling*, of the annual Rent of 6*l.* 13*s.* 4*d.* payable to his Majesty, his Heirs, and Successors, for the said Estate at *Shimpling*, and other Estates in *Nottinghamshire*, referred by the present Lease thereof, and the Estate for Life of the Respondent the Duke therein, and the Right and Interest of any Son or Sons of his Grace, in case he should have any: But that he had been informed, and believed, Lord *Vane* and the Earl of *Darlington* had claimed to be intitled to the absolute Estate and Interest in the said Estate called *Shimpling Park*, and other the said late Duke *John's* Leasehold Estates for Years, subject to the present Duke's Life Estate, and to the Contingency of his having a Son born; and that his Grace had insisted, he was not obliged to obtain any new Lease of *Shimpling Park*, according to the said Agreement; and that, if he was, yet that he ought only to be charged with the Interest during his Life of the Money which should be paid for the Fine, Fees, and Expences, on obtaining such new Lease; and that the Principal of such Money ought to be a Charge on the absolute Right and Interest in and to the said Estate after his Grace's Death; and insisted, he ought not to be compelled to perform his said Agreement till such Claim of the Duke's, and also the Claims of Lord *Vane* and the Earl of *Darlington* should be determined by the Court: And that in case the Court should be of Opinion, that the Appellants, or either of them, would not be absolutely intitled to the said Estate on the Duke's Death, in case he should not have a Son born, for the Remainder of the Term therein, then he hoped he should be discharged from the said Agreement; and also insisted, that if the Court should be of Opinion, that the Appellants, or One of them, would be intitled to the said Estate on the said Duke's Death without having a Son born, for the Remainder of the Term therein, and that the Principal-money to be paid for Fine, Fees, and Expences, on obtaining a new Lease thereof, according to the said Agreement, ought to remain a Charge on the said Premises after the said Duke's Death, then, and in such last-mentioned Case, a proportionable Deduction or Abatement, on account of such Fine, Fees, and Expences, ought to be made out of the Purchase-Money.

And the Respondent Lord *Vane*, by his said Answer, said, that Lord *Vane*, his Father, had Issue *Christopher*, his eldest Son (who died an Infant, and without Issue, in his Father's Life-time), and him the said Respondent, his younger Son; and that he was advised, and insisted, that the said *Christopher* was the First Person in Point of Time *in Effe* that had or took any Estate of Inheritance in the Premises in the said Will and Act of Parliament mentioned; and that, he dying an Infant, the Respondent, as the only surviving Son and Heir apparent of his Father, became the First Person *in Effe* who took any Estate of Inheritance in any of the said Premises by virtue of the said Limitations; and that Lord *Vane*, his Father, also died many Years since, leaving the said Respondent, his only Son and Heir; and that he, on his Father's Death, became seised of an Estate Tail, in Remainder, immediately expectant on the Determination of the Estates limited to the Duke, and to Mr. *Pelham* his Brother, and to their First and other Sons respectively, of and in all the Freehold and Copyhold Honours, Manors, Messuages, Lands, and Hereditaments, in the said Will and Act of Parliament mentioned; and that he also became intitled to all the Leasehold Estates, as well for Lives as Years, in the said Will and Act mentioned, subject to the Contingency of the Duke's and Mr. *Pelham's* dying without Issue Male: *And therefore submitted it to the Judgment of the Court*, that the absolute Estate and Interest in the Estates held by Leases for Years, and limited to the Respondent the Duke for Life, did not vest in Thomas *Pelham*, the eldest Son of Henry *Pelham*, subject to the Estate for Life of the Duke, and to the Contingency of his having a Son born; and subject also to the Estate for Life of Mr. *Pelham* therein, in case the Duke had happened to die in his Life-time without having any Son born.

And the Respondent Lord *Vane* also admitted, that he had obtained Administration to his Brother *Christopher*; and that he and the Earl of *Darlington* had disputed, and did dispute, the Appellants Right in the late Duke's Leaseholds for Years: And he insisted, he was intitled to the absolute Right and Interest therein, expectant on the Respondent the Duke's Death without Issue Male; and that no Estate or Interest in the said Leasehold Estates vested in Thomas *Pelham*, so as to intitle him thereto, or to defeat the contingent Interest, limited as aforesaid to him the said Respondent: And that the Limitations of such contingent Right or Interest in the said Respondent, being to arise on the Deaths of the Respondent the Duke and Mr. *Pelham* without Issue Male, and they being both *in Effe* at the Time of making Duke *John's* Will, the same was a good and valid Limitation, to arise within such a reasonable Compas of Time as had been allowed of at Law and in Equity in Limitation of Leasehold Estates; and insisted, that such his Right and Interest is well grounded; and that the Right and Interest set up and claimed by the Appellants Bill was without Foundation in Law or Equity; and that therefore they could not make a good Title to a Purchasor of the Premises in the Bill.

And the Respondent the Earl of *Darlington*, by his Answer, said, that he was the eldest Son and Heir of Henry late Earl of *Darlington*, who was the eldest Son and Heir of Gilbert late Lord *Bernard*; and prayed, that such Interest in the Premises in question, as he was by Law intitled to by virtue of Duke *John's* Will, and the said Act of Parliament, and the Agreement therein mentioned, might be preferred to him.

And the Respondent the Duke of *Newcastle*, by his Answer, admitted, that he was in Possession of *Shimpling Park*; and said that, there being only Twelve Years then to come in the Lease, he was ready and willing to procure a Lease thereof for a further Term, according to the Agreement in the Bill, or such other Lease as could be obtained, provided he was not, on account thereof, put to any further Charge than keeping down, during his Life, the Interest of the Money to be paid for the Fine, Fees, and Expences, on obtaining such Lease: But submitted to the Court, whether, if such new Lease should be obtained, the Fine, Fees, and Expences, on obtaining the same, ought not to be a Charge on the absolute Estate and Interest in the said Leasehold Estate, and to be born by the Person or Persons who are, or is, or on his Death should be, intitled to such absolute Estate and Interest therein, the Respondent only keeping down the Interest thereof during his Life: And in case the Court should be of Opinion, that such Fine, Fees, and Expences, ought not to be charged on the absolute Estate and Interest in the said Leasehold Estate, then he submitted to the Court, whether he ought

to

Gregory's Co-

Respondents
Mr. Gregory's
wers in Chan-

Gregory's An-

Vane's Answer.

Earl of Dar-
ton's Answer.The Duke of New-
castle's Answer.

to be bound to obtain any such new Lease, as he had not, as he apprehended, any Right or Title to the said Estate longer than for his Life.

1759. April 7. After the coming in of the said Answers Mr. *Gregory* died, having made his Will, and the Respondent *Susanna Gregory*, Spinster, sole Executrix thereof; who proved the same. Whereupon the Appellants exhibited their Bill of Revivor against Mrs. *Gregory*, and the Cause was duly revived against her.

1759. Nov. 13, 14. After the coming in of the said Answers Mr. *Gregory* died, having made his Will, and the Respondent *Susanna Gregory*, Spinster, sole Executrix thereof; who proved the same. Whereupon the Appellants exhibited their Bill of Revivor against Mrs. *Gregory*, and the Cause was duly revived against her.

16, & 17. & Dec. 4. The said Cause was heard before the Right Honourable the Lord Keeper of the Great Seal of Great Britain: When his Lordship was pleased to declare, that he was of Opinion, that, as in this Case the Claims of the Respondents Lord *Vane* and the Earl of *Darlington* were not within his Cognizance to determine, his Lordship could not decree a specific Performance of the Agreement in question against the said *Susanna Gregory*; and did therefore dismiss the Appellants Bill, as against the Respondents Lord *Vane* and the Earl of *Darlington*, with Costs; and as against the Respondents *Susanna Gregory* and the Duke of *Newcastle*, without Costs.

The Appellants, conceiving themselves aggrieved by the said Decree or Order of Dismissal, have appealed from the same to your Lordships, for the following (amongst other),

R E A S O N S :

I. The Question of Right, disputed between the Parties, is submitted to be extremely clear, upon the known and fixed Rules of Law. Terms for Years are not allowed to be settled in the same Manner as Freehold Estates; nor are capable of being limited by proper Words of Inheritance. In the Case of Freeholds, successive Remainders, in Tail, may all be vested at one and the same time; and may take Effect in Possession successively, as the respective Limitations to each Tenant in Tail, and the Heirs of his Body shall determine, at any remote Distance of Time, defeasible only by some Tenant in Tail in Possession, who shall think fit to suffer a common Recovery. But a vested Estate Tail in a Term for Years to one, and the Heirs, or Heirs Male of his Body, implies the absolute Ownership of it (though improperly express), as much as if the Tenant in Tail was entitled to it, by a correct Limitation to himself, his Executors, Administrators, and Assigns. All subsequent Limitations therefore, after a general Failure of the Issue of such Tenant in Tail, are void; unless made to take Effect, within the Compass of a Life or Lives in being; or unless the successive Limitations in Tail of such Term or Leasehold Estate are contingent in their Creation; and then they are considered as Possibilities, which will finally be either valid or void, effectual or ineffectual, as the Event happens. For Instance; a Testator (as in this Case), devises a Leasehold for Years to one for Life (who has no Children), with Remainder to his First and other Sons, in Tail Male; Remainder to another for Life, with the like Remainders to his First and other Sons, in Tail Male, with several Remainders over. If the Second Tenant for Life has a Son born, before the First Tenant for Life has a Son, the Remainder in Tail limited to that Son will vest; and all the subsequent Remainders, which were good as Possibilities, whilst the Contingency of a nearer Heir's coming into Existence was in Suspense, are, *ipso facto*, from that Moment determined. Though such Tenant in Tail should die an Infant the next Day after his Birth, the Ownership of the Term must vest, and his Administrator must take it, subject only to be defeated by the Birth of a Son of the First Tenant for Life, who will still be prior to such intestate Infant in the Order of the Limitations. The Instance here proposed exactly corresponds to the Circumstances of the present Case; and may be supported by legal Reasoning and accurate Authorities.

II. Such being the Nature of the Right under the Will of *John Duke of Newcastle*, a specific Performance of the Agreement ought to have been decreed. The Purchasor was fully informed of the Nature of the Right: The Parties intitled to dispute the Question stood before the Court, claiming under the same Instrument with the Vendors, all of them expressly submitting that Question to the Judgment of the Court, particularly the Respondent Lord *Vane*, without suggesting by their Answers in the Cause, or by the Argument of their Council at the Bar, the remotest Possibility of Prejudice to themselves, from a Declaration, to be made by the Court, upon the Matter of Right litigated in the present Suit.

OBJ. Lord *Vane* and the Earl of *Darlington*, whose Rights (supposing they have any), cannot take Effect in Possession during the Life of the Respondent the Duke of *Newcastle*, are not, nor can be called upon to do any particular Act to affirm the Title of the Purchasor, and therefore the Court of Chancery could not determine or take Cognizance of their Rights in the Lifetime of the Duke, merely for the Sake of quieting Questions between the Appellants and the Purchasor.

ANS. 1. The Court, having Jurisdiction to give Relief on the Subject Matter of the Agreement, may declare Rights, and determine all Questions legal or equitable, incident to that Relief, as between the Parties to the Contract. Where the Purchasor has brought his Bill upon the Agreement, the Court may decree a Performance against the Vendor: Where the Vendor has brought his Bill, the Court may decree against the Purchasor, even tho' Strangers, whether Parties or not Parties to the Suit, may appear to have some Claims by Title paramount to the Vendor, depending upon prior Entails, and different Conveyances. In case the Facts are intricate or doubtful, the Court refers it to the Master in the First Instance to see whether a good Title can be made. Upon his Report, it comes on afterwards for the Judgment of the Court; and many Precedents may be found, where Purchasors have been decreed to accept Titles, and yet the outstanding Claims of others have not been determined, so as to conclude and bind them. In case the Question of Title happens to be a single Question of Law or Equity, depending upon the Construction of a Deed or Will, which is as ripe for the Judgment of the Court upon the Pleadings, as it can be after a Reference to the Master, the Court will take Cognizance originally, and determine it between the Parties. If this Jurisdiction were not exercised, not only many Agreements for Purchases, but many Trusts affecting real Estates for the Payment of Debts, in which the Rights of many Parties are involved, would be long suspended, or totally defeated.

2. This Case stands peculiarly clear of every Difficulty in the Way of the Relief prayed. Not only the Submission of all the Parties, but the Clearness of the Question, and the Impossibility of future Prejudice to the Rights of the Respondents, or of any general Inconvenience in respect of the Precedent, support and authorize that Relief. If such Difficulties prevail, no Agreement for the Sale of a contingent Right can ever be allowed in Equity. Suppose Mr. *Pelham*'s eldest Son, the First Tenant in Tail, or absolute Owner of the Leafholds, who came into Being, had lived to the Age of 21, and had contracted Debts, no Sale could have been made for the Payment of those Debts, though the Expediency had been ever so great. Nor could they have been valued or included in the Administration of his Assets, till it had been seen, whether he would survive the Death of the Respondent the Duke of *Newcastle* without Issue Male, even though his Creditors had contracted to sell his contingent Right in them. The Case is exactly the same, as it now concerns the Assets of those who represent him.

OBJ. The Question of Right in this Cause is intirely legal; and whatever Determination is made, as to the Claim of Lord *Vane* and Lord *Darlington*, yet, on the Death of the Respondent the Duke of *Newcastle* before the Expiration of the Term, whatever shall stand next intitled in the Order of the Limitations may bring an Ejectment for recovering the Possession: And the Appellants, by their Bill, have prayed no Injunction to restrain it.

ANS. Many Decrees for the specific Performance of Agreements of this Sort, between Vendor and Purchasor, have been pronounced, without any Injunction granted to affect other Persons, not Parties to such Agreements. But it is apprehended, that the Submission of the Respondents, by their Answers, gives a clear Jurisdiction to the Court to declare the Right for the Benefit of the Appellants. And in case Actions should hereafter be brought at Law to try the Question, the Court of Chancery would enjoin those Proceedings, upon the Ground of such Submission. This Reasoning is agreeable to constant Experience in that Court; where a general Submission to account, between Merchants and their Correspondents or Trustees, and those who are interested in the Trust, will open stated Accounts, and amount to a Waiver of Releases and legal Bars (though otherwise they might have been insisted upon), and found the equitable Jurisdiction of the Court, to unravel the whole Transaction, merely by Force of such Submission.

Wherefore, and for divers other Reasons, the Appellants humbly hope the said Decree, or Order of Dismissal, shall be wholly reversed; and that the said Agreement, of the 25th Day of September 1758, made between the Appellants and the said George *Gregory*, shall be specifically performed and carried into Execution; and that the Lease of the said Messuages, Lands, and Tenements, shall be renewed according to the Terms of the said Agreement; and that the Respondent the Duke of *Newcastle* shall pay the Fine and Fees which shall become due and payable thereon; and that the Respondent *Susanna Gregory* shall, upon such new Lease being obtained, and upon the Appellants assigning to her all their Right and Interest in the said Leasehold Messuages, Lands, and Tenements, at Shimpling, pay the said Sum of 1000*l.* Purchase-money for the same, to the Appellants; or that the Appellants may have such other Relief in the Premises, as to your Lordships, in your great Wisdom, shall seem meet.

C. YORKE.
THO. SEWELL.

Die Martis 18. Martij 1760.

After hearing Council as well Yesterday as this Day in this cause
the following Questions were put to the Judges.

" Whether the property of the Household Estates for Years devised
" by the Will of John late Duke of Newcastle vested in Tho: Pelham
" the Infant son of Henry Pelham Esq: deceased subject to the Respond.
" the Duke of Newcastle's Interest therein for his Life, and to the
" Contingency of the said Duke's having a Son?

" Whether the property of the said Household Estates subject to
" as aforesaid is transmitted to the Representative of the said Tho:
" Pelham the Infant?

And the Lord Chief Baron of the Court of Exchequer delivered
their opinion upon the said two Questions in the Affirmative.

Whereupon It is Declared That, the said Household Estates, subject to the Respond. the Duke of Newcastle's Interest therein for his Life, and defeasible by the said Respond. the Duke's having a Son, belong to the Appell. as standing in the place of Tho: Pelham, the Infant son of Henry Pelham Esq: deceased, and that the Agreem. entered into between them, and George Gregory deceased for the Sale of their Estate & Interest in Shimplin Park mention'd in the pleadings in this cause, ought to be carried into Execution - And it is Order'd
and Adjudg'd that the Decree complain'd of except such Part thereof whereby the Bill is dismiss'd with Costs against the Respond. the Lord Vane and the Earl of Darlington be Revers'd - And that that Part thereof be Affirm'd, and the Agreem. before mention'd be perform'd and carried into Execution; and that the Court of Chancery do give all proper Directions for carrying the same into Execution.)

Susanna Gregory, Spinners, and Respondents.
others, - - - - -

The Appellants C A S E.

To be Heard at the Bar of the House of Lords,
on Monday the 17th Day of March 1760.